Contract Construction

In interpreting the provisions of collective bargaining agreements in resolving grievances, the VLRB follows the rules of contract construction developed by the Vermont Supreme Court. The cardinal principle in the construction of any contract is to give effect to the true intention of the parties.[1] A contract must be construed, if possible, so as to give effect to every part, and from the parts to form a harmonious whole.[2] The contract provisions must be viewed in their entirety and read together.[3]

A contract will be interpreted by the common meaning of its words where the language is clear.[4] If clear and unambiguous, the provisions of a contract must be given force and effect and be taken in their plain, ordinary and popular sense.[5] Extrinsic evidence under such circumstances is inadmissible as it would alter the understanding of the parties embodied in the language they chose to best express their intent.[6]

The Board will not read terms into a contract unless they arise by necessary implication.[7] The law will presume that the parties meant, and intended to be bound by, the plain and express language of their undertakings; it is the duty of the Board to construe contracts; not to make or remake them for the parties, or ignore their provisions.[8]

However, resort to extraneous circumstances such as custom or usage to explain or interpret the meaning of contractual language is appropriate if sufficient ambiguity exists in the contract.[9] Ambiguity exists where the disputed language will allow more than one reasonable interpretation.[10] Where the disputed language is sufficiently ambiguous, it is the duty of judicial or quasi-judicial bodies to construe a contract so as to ascertain the true intention of the parties.[11] In such circumstances, it is appropriate to look to the extrinsic evidence of past practice and bargaining history to ascertain whether

---

[1] Grievance of Cronan, et al, 151 Vt. 576, 579 (1989).
[2] In re Grievance of VSEA on Behalf of "Phase Down" Employees, 139 Vt. 63, 65 (1980).
[3] In re Stacey, 138 Vt. 68, 72 (1980).
[4] Id. at 71.
[5] Swett v. Vermont State Colleges, 141 Vt. 275 (1982).
[6] Hackel v. Vermont State Colleges, 140 Vt. 446, 452 (1981).
[7] In re Stacey, 138 Vt. at 71.
[8] Vermont State Colleges Faculty Federation v. Vermont State Colleges, 141 Vt. 138, 144 (1982).
[9] Nzomo, et al. v. Vermont State Colleges, 136 Vt. 97, 101-102 (1978).
[10] In re Grievance of Vermont State Employees' Association and Dargie, 179 Vt. 228, 234 (2005).
[11] Grievance of Gorruso, 150 Vt. 139, 143 (1988).

such evidence provides any guidance in interpreting the meaning of the contract.[12] Interpretation of an agreement may involve interpolating from a written text solutions not expressly spelled out in the text.[13] This may require blending textual interpretations and the "contracts implied in fact" in the form of established past practices.[14]

The Supreme Court has held that, in construing a contract, the Board can "consider the practical construction placed upon an instrument by the parties."[15] In addition, based on its evaluation of the contract language, the Board can look at the "situation and motive of the parties," and the result "contemplated by the parties when they executed the . . . agreement."[16]

The Board indicated in one case that, where a party in contract negotiations unsuccessfully attempts to include a specific provision in the contract and requests that the Board interpret ambiguous language in such a way as to obtain what it did not obtain across the bargaining table, the Board was reluctant to read such a provision into the contract. This was particularly so where the past practice to the contrary was so clear and longstanding and where the party requesting the interpretation did not indicate during negotiations on its rejected proposal that it believed the existing contract language was consistent with the position it was now asserting before the Board.[17]

The Board and the Supreme Court have indicated that they will not recognize an individual contract inconsistent with the collectively bargained agreement. This is because "(t)he very purpose of a collective bargaining agreement is to supersede individual contracts with terms which reflect the strength and bargaining power and serve the welfare of the group."[18]

Also, employment rules and regulations promulgated by the employer concerning a particular condition of employment are superseded by the collective bargaining agreement where the agreement addresses the same issue that is covered by the employer

---

[12] Grievance of Majors, 11 VLRB 30, 35 (1988).
[13] Burlington Area Public Employees Union, Local 1343, AFSCME, AFL-CIO v. Champlain Water District, 156 Vt. 516, 520 (1991).
[14] Id. at 521.
[15] In re Cronan, 151 Vt. 576, 579 (1989).
[16] In re Gorruso, 150 Vt. 139, at 143, 145 (1988). *See also* Grievance of Cole and Cross, 28 VLRB 345, 371-372 (2006).
[17] Grievance of Majors and Vermont State Colleges Staff Federation, 11 VLRB 30, 36 (1988).
[18] Morton v. Essex Town School District, 140 Vt. 345 (1982). Grievance of McFarland, 10 VLRB 220, 227 (1987).

policy.[19] However, the Board has concluded that personnel rules and regulations unilaterally promulgated by the employer were a past practice implicitly embedded in the contract, where the parties bargained with the knowledge the personnel rules were applicable and no contract provision addressed the applicable personnel rule.[20]

A mistaken interpretation by an employer of a provision of the collective bargaining contract for many years does not justify denying employees rights to which they are entitled under a correct interpretation of the contract.[21] A contractual provision which is incorrectly interpreted for a period of time does not render the provision invalid.[22] By the same logic, a mistaken interpretation by the employer of a provision of a contract does not justifying granting employees rights to which they are not entitled by a correct interpretation of the contract.[23]

In one case, the Board addressed the applicability of a part-time faculty contract to full-time faculty in a different bargaining unit, and covered by a different contract, where the same union represented both full-time and part-time faculty. The Board determined that the provisions of the part-time contract were pertinent to the extent that such provisions provided context and helped clarify existing practices when the full-time contract was not clear and unambiguous, but that such provisions could not be construed to expand the responsibilities of full-time faculty whose responsibilities were negotiated and set forth in the full-time contract.[24]

The Board concluded that it would be inappropriate to have one represented group's duties increased without their input when that group already had negotiated over specific duties, particularly when the full-time faculty and part-time faculty were placed in different bargaining units due to a lack of a community of interests shared by both

---

[19] Grievance of Cole and Cross, 28 VLRB 345, 370 (2006). Grievance of Graves, 147 Vt. 519, 522-523 (1986). In re Muzzy, 141 Vt. 463, 476 (1982). Grievance of Nottingham, 25 VLRB 185, 192 (2002).
[20] Grievance of Cole and Cross, 28 VLRB at 370-371 (2006). Grievance of Cronin, 6 VLRB 37, 69-70 (1983).
[21] Grievance of VSEA (Re: Compensatory Time Credit), 11 VLRB 300, 306 (1988). Grievance of Nottingham, 25 VLRB 185, 192 (2002).
[22] Id.
[23] Grievance of Brown, et al, 20 VLRB 169, 183 (1997). Grievance of Cronan, et al, 6 VLRB 347, 355 (1983); *Reversed on other grounds*, 151 Vt. 576 (1989). Grievance of Cantarra, 1 VLRB 305 (1978).
[24] Grievances of Vermont State Colleges Faculty Federation (Re: Department Chairpersons), 26 VLRB 226, 236 (2003).

groups.[25] The Board held that full-time faculty should not be placed in a worse position due to the exercise of the right to freely choose their bargaining representative, and that would be the result if the Board determined that the full-time faculty were governed by the provisions of the part-time faculty contract.[26]

An employer is not always able to rely on the terms of a collective bargaining contract to shield its actions. In one case, the State Colleges contended that a non-reappointed faculty member should be treated as a second year faculty member, even though the Colleges had treated the faculty member as third year faculty, because the faculty member actually was a second year member under the terms of the collective bargaining contract. The Board analyzed the issue by applying the doctrine of equitable estoppel.[27]

Under the doctrine, a party to a contract may lose the right to assert a term of the contract by estoppel. Equitable estoppel is based upon concerns of public policy and an interest in encouraging fair dealings, good faith and justice.[28] Its purpose is to forbid one to speak against his or her own acts, representations or commitments to the injury of one to whom they were directed and who reasonably relied thereon.[29] The test to determine whether a party is estopped from a claim is whether, in all the circumstances of the case, conscience and duty of honest dealing should deny one the right to repudiate the consequences of his or her representations or conduct.[30]

The party invoking the doctrine of equitable estoppel has the burden of establishing that: 1) the party to be estopped knows or should have known the facts; 2) the party being estopped intends that his or her conduct shall be acted upon or the acts must be such that the party asserting the estoppel has the right to believe it is so intended; 3) the party asserting the estoppel must be ignorant of the true facts; and 4) the party asserting the estoppel must rely on the conduct of the party to be estopped to his or her

---

[25] Id., *citing* Vermont State Colleges Faculty Federation v. Vermont State Colleges, 152 Vt. 343, 351 (1989).
[26] Grievances of Vermont State Colleges Faculty Federation (Re: Department Chairpersons), 26 VLRB at 236-37.
[27] Grievance of Vermont State Colleges Faculty Federation, AFT Local 3180, AFL-CIO (Re: Adrianne Lioce), 19 VLRB 1, 17 (1996).
[28] Id.
[29] Id.
[30] Id.

detriment. In applying these standards, the Board concluded that the Colleges were estopped from asserting that the provisions of the collective bargaining contract required that the faculty member be considered as a second year faculty member at the time of her reappointment.[31]

[31] Id. at 11-13.